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In this thesis I will argue that the state can limit individual freedoms, rights, or autonomy in instances where such restrictions maximize utility—defined here as well-being—using act-utilitarianism and state paternalism as the theoretical foundation of my argument. The state already follows such restrictions in many cases, as in no-smoking areas and helmet and seatbelt laws, and I will argue that there follows a logical expansion of these limited restrictions to more controversial restrictions. I will use the examples of food regulation and gun control as specific cases for my argument. There is, however, a de facto limit to my claims: if a restriction does not maximize utility, then it is not justifiable and should not be implemented. I will present several cases of this to iterate the point throughout this paper, as well as a section on why restricting freedom of speech is unjustifiable. I will also provide several objections to my thesis and responses. One of the most common objections to my thesis is that it invasively controls the individual and could potentially lead to an abuse of state power; I will respond to this objection throughout my paper, as well as other pertinent objections.

Introduction

I firmly believe that people are self-interested; they care about their own goals, their own lives, their own status, etc. Therefore, it falls onto the state, or government, to defend the people against those individuals who would hide behind autonomy or rights to justify their do-as-they-please actions when those actions are, in fact, detrimental to the good of the populace as a whole. Often it is the state that is hindered when trying to promote the greatest good, and I think this is morally unjustifiable. There are many situations where the government steps in to regulate the actions of individuals—such as speed limits or seatbelt laws—and most of these instances are overlooked as necessary violations of autonomy. Then there are cases where the state targets a specific group of individuals and limits their actions, as in the banning of smoking in public areas. Here, the freedom of the individuals of this group is violated by the state in the interest of preventing the potentially negative effects of secondhand smoke on other individuals. This is a relatively uncontroversial example, but its extension to other examples should logically follow.

Argument

I will be arguing that individuals have limited claim to autonomy, freedom, or rights when they conflict with an act that could maximize utility; the state has the authority and duty to facilitate this outcome. I will first establish that this capacity is derived from act-utilitarianism—a theory of utilitarianism that values utility as the measurement for consequences and subsequent courses of justifiable action (Mautner). I will then use the case of state diet regulations to illustrate a relatively uncontroversial example of how state paternalism maximizes utility. This case will illustrate acceptable violations of freedoms and rights, and I will conclude that, under

the same logic, more drastic actions of state paternalism are also justified. I will then discuss gun control, which in the United States is a constitutionally-protected right, as an example of a more controversial restriction of liberty. The relevant question then becomes: what limit do we place on state intrusion of individual freedom? I will argue that there is a de facto limit: as long as the action maximizes utility, it is justified under act-utilitarianism and the state has the authority to violate that individual freedom; but if the action does not maximize utility, then it is simply not justifiable. To iterate this point, I will present a case that will illustrate when state paternalism does not maximize utility by violating an individual's freedoms or rights: restricting freedom of speech. I will then discuss an instance where the state has tried to limit freedom of speech and will show how such actions are unjustifiable.

Theoretical Foundation

Philosophers, politicians, and ordinary people might agree that individuals are guaranteed the freedom to do as they please. This is the notion of autonomy that is very well-guarded and protected by legal rights (Alexander). But in many cases, such as smoking in public areas, the state denies or mitigates those freedoms to promote the “greater good.” This is part of the utilitarian idea that we should consider all our options and make the choice which maximizes utility—utility, in this argument, being the measure of an individual's well-being. Determining the amount of utility does not merely take into account the number of people affected, although utilitarianism considers each involved individual equally, but also the total utility of each individual. Furthermore, maximum utility is determined by the potential outcome of a situation— i.e. the consequences, taking into consideration both the potential positive and negative effects. This theory is a form of direct utilitarianism—the idea that “any object of moral

assessment (e.g. action, motive, policy, or institution) should be assessed by and in proportion to the value of its consequences for the general happiness”—and is known as act-utilitarianism: the justification of an action is determined by the value of the consequences of that particular act (Brink; Mautner).

Utilitarianism is a progressive theory and mirrors the shift to the more contemporary notions of industry, government, and individual rights. In previous theories of ethics, the center was God and divine rules, or abstract moral principles to which one must adhere—such as Kant’s deontological Categorical Imperative, or the virtue ethics of Aristotle—and not all individuals, or all creatures for that matter, were considered equal; some, like animals, were even completely excluded from moral consideration. Early utilitarian theorists were British moralists, like Cumberland, Shaftesbury, Hutcheson, Gay, and Hume (Driver). However, Bentham and Mill, who posited what is known as Classical Utilitarianism, focused on legal and social reforms to weed out what is unjust (Driver). These unjust laws were not only pointless and counterproductive, but were actually unjustifiable (Driver). With Bentham’s Principle of Utility, “which approves or disapproves of every action whatsoever, according to the tendency which it appears to have to augment or diminish the happiness of the part whose interest is in question,” such unjustifiable laws are easily distinguished by their effect, and not on some abstract rule or theory, or their supposed origin in the divine (Rachels, 90).

One of the most common objections to the theory of utilitarianism is the difficulty of quantifying utility—which applies very much to this argument, because “maximizing utility” is the main purpose of an action. How can we know that secondhand smoke is detrimental to people? Must we ask every individual to ascertain the positive and negative utility of each action,

and the degree to which they were affected? That seems too expansive, and to make any judgment on actions that have consequences would require full knowledge of all the factors that come into play, or else risk an incomplete or incorrect verdict. The fundamental premise of this argument is that if something is too difficult, then we should not attempt it. However, utilitarianism only seems to be a heavy calculation-based theory. In the case of secondhand smoke, we do not have to individually follow the lives of the affected people to assess if the action was justifiable. Utilitarianism merely assesses the potential effects of each option. This allows for a certain amount of guesswork and assumption: we may assume that fifty people passing by smokers all equally have the potential chance of facing the ill-effects of secondhand smoke. The state would thus not need to inquire with each of those fifty people to find out if they had developed lung cancer in order to justify the restriction of smoking areas.

Furthermore, statistics guesswork—that is, gathering data from a sample of individuals to try and ascertain an explanation that can be applied to the greater population—is one way in which the utilitarian calculation is assessed. This type of data collection is used in many other studies and does not require the specific reaction of every individual to garner a verdict. In more complex cases, like capping household energy usage or requiring evacuations of dangerous areas, a utilitarian calculation might require individual data in a way that does not allow assumptions. It would be unreasonable to try and justify limiting household energy usage without knowing the exact data on the subject in a particular area. With smokers, we can assume that if X percent of people in a sample get cancer from secondhand smoke, then X percent of the population could also get cancer. But to say that one house in an area uses Y amount of energy and then conclude that all the houses in that area use the same amount of energy would be a far less justifiable assumption. Accordingly, it would seem ridiculous to insist upon the mandatory evacuation of

any area during times of imminent danger without any prior information to validate that decision. Data regarding the consequences of evacuation during previous disasters would be needed to perform any judgment, particularly if the state intends to infer a conclusion that might not necessarily follow from the given evidence. In both of these cases, the duty of data collection falls upon the state, but just because this would be hard for the state to do does not derail the argument that it should be done. It actually furthers the point that I will make: it is the duty of the state to make these difficult decisions, because the state has the necessary capacity and means and the role responsibility to determine the justification of more complex actions that an individual might not be capable of seeing completely.

Limiting individual freedom in a way that increases the utility of the many is a core component of state paternalism. The state essentially acts in the best interest of society; according to act-utilitarianism, these actions would be justified, even if they violate autonomy or rights, because they maximize utility. This could seem expansive and invasive, and one could even ask “What is this state and what gives it this authority?” For the purpose of this paper, I am assuming a democracy when discussing the duty and nature of the state; while there are different types of states and different justification for their actions, and therefore different ways of responding to this objection, I will discuss an American-style democracy. The state is an agent of society (usually the government) that works for the public good, is not a private entity, and has both the authority and the duty to serve the people. This authority, while in some cases is both received from and legitimized by the population it governs, is ultimately derived from whatever creates the entity that is the state. In the United States of America, this authorization comes from the Constitution and Bill of Rights, documents that outline what the government can and cannot

do, and as well as to what extent the legislative, executive, and judicial branches can create, enact, or limit such actions.

It is the state's duty and interest to make the best possible decisions for the good of the populace. This is a key factor in justifying state paternalism: the state as a governing entity, and as both a product of and a moral agent for the people, has the necessary characteristics that would justify its authority in making moral decisions that might restrict individual freedoms or rights. Governmental regulation of smoking indoors, in public places, or around children is an example of state paternalism: the state violated the freedom of smokers to smoke where they chose in order to protect people—an action which promotes the greatest utility. The state's duty to do so is also derived from the creation of the state. Under the principles of utilitarianism, the morally-right course of action is the one which maximizes utility, and society's actions, being a collective of individuals, must also hold true to this principle and maximize the utility of those governed by that particular state. Being a collection of individual utility, the overall maximized utility would be the desirable outcome; the actions of society that strive towards this outcome would then be the morally-justified actions.

There is a distinction between weak paternalism and strong paternalism: restricting a rational and competent person's autonomy in order to protect that person is known as weak paternalism. This would include all of my previously given examples: all of the individuals, involved in smoking, eating, or possessing firearms are rational and competent beings who would have their freedom of action restricted for the benefit of both themselves and society as a whole (Armsden). However, strong paternalism justifies acting for individuals that do not have the rational capacity to make their own decision—e.g. brain-dead patients (Armsden). This is an

idea championed by Gerald Dworkin: “Extensions of paternalism are argued for by claiming that in various respects, chronologically mature individuals share the same deficiencies in knowledge, capacity to think rationally, and the ability to carry out decisions that children possess” (Schauer, Sinnott-Armstrong 333). Dworkin suggests that “We would be most likely to consent to paternalism in those instances in which it preserves and enhances the individual in his ability to rationally consider and carry out his own decisions” (Schauer, Sinnott-Armstrong 337).

The paternalism Dworkin offers might be appealing to many because he values liberty and freedom intrinsically; to violate it, the state must provide a “heavy and clear burden of proof... to demonstrate the exact nature of the harmful effects (or beneficial consequences) to be avoided (or achieved) and the probability of their occurrence” (Schauer, Sinnott-Armstrong 337). I, however, argue that liberty and freedoms do not have intrinsic value; in some cases, their existence maximizes utility. The freedom to drive a car without wearing a seatbelt or to ride a bike without wearing a helmet might increase individual utility in the form of immediate convenience. State paternalistic action, then, would have to prove that hindering such freedoms would maximize utility.

But this does not mean that the freedom in itself is valuable; rather, the effects of the freedom—if they produce an increase in well-being—would have the value. For example, if I live in a crowded urban area with many potential objects that I could hit while riding a bike, to protect me and limit the burden of injury due to hitting an object the state could—and does, in many areas—inhibit my freedom by requiring me to wear a helmet. The freedom to not wear a helmet in itself does not have a value, but the seconds I would shave off my schedule by not wearing a helmet would increase my utility. The state then presents an alternative that has a

greater overall positive effect on my utility—that is, preventing unnecessary injury (and thus, greater unnecessary time and resource wastage) by requiring me to wear a helmet. I think the burden of proof that harmful or beneficial effects will be avoided or achieved if the state restricts personal autonomy falls on the state as a duty; however I do not make the distinction between the freedom as value in itself and the effect as value in its outcome: if a restriction that will maximize utility has a greater positive effect than that of the freedom, then it is justifiable.

Utilitarianism is a type of consequentialist ethics that focuses on the effects of an action (Sinnott-Armstrong). A main factor in making ethical decisions based upon utilitarian theory is the probability of a consequence coming to pass, whether positive or negative. There are multiple possible outcomes for every action taken. The analysis of these potential consequences must come from the relevant facts and information available because there needs to be a basis for the decision-making. I argue that the state has the necessary means and the capacity to make such assessments, much more so than any individual or a group of individuals. I certainly do not know the sample statistics of cancer rates from secondhand smoke, nor do I know the chances of bike-riding injury in the greater Portland area; by this fact, I would not be able to make a truly informed decision for my best interest. The state, on the other hand, with bureaucracy and data collection means, has this data available, and if not, could collect the data easily; they would be much more capable and qualified to know the action that would best increase my utility and make a decision that promotes it.

In this line of thinking, another objection is: informed professionals, who might not necessarily work for the state, do have the power to make assessments that, according to my argument, the state should make. Under-informed, ill-informed, or ignorant individuals would

not necessarily be called out to make decisions alone; for instance, when a pregnant woman goes to a doctor for a professional opinion regarding the health of her child, it seems ridiculous to suggest that what she should or should not do depends on a state-supported prescription over the opinion of her doctor. According to my argument, state-level governments are justified when making abortion laws that supersede the medical knowledge and advice of the doctor because the state knows best. The objection is that the burden does not fall onto the state in all cases, nor does the state always make the best decision. For the second part of this objection, I discuss throughout this paper the distinction between an “ideal state” and an instance of a state—i.e. American democracy—and this distinction affects whether we should do an action considering the socio-historical circumstances. But for the first part of this objection, I think that informed professionals are a minority and would not necessarily have an extensive amount of information on multiple aspects of their lives or others’ lives, as opposed to the information available to a group of informed individuals whose profession it is to make policy and interact with bureaucracy and the complexities of social interactions.

While neither the state nor informed professionals have an exhaustive or perfect knowledge and capacity to justify certain implementations of restrictions, I argue that the state has the more extensive knowledge and greater capacity to make such judgments. Informed professionals are a minority population that that would have specialized knowledge in a singular field, and even they would not necessarily have an extensive amount of information pertaining to multiple aspects of their life—as opposed to a group of individuals who specialize in the facts and data involved in policy making and bureaucracy. In that respect, even they would not be capable of making the most informed decisions about what to do in every particular instance. I think that the state, in maximizing utility, would enact restrictions that, generally, informed

professionals in that particular area would agree with. Furthermore, informed professionals are a resource that the state would utilize when making decisions to maximize utility; there is not necessarily a dichotomous separation between the two, each in their own respective camps. They could act as consultants to government individuals, or could be a part of the state, to utilize their expertise in discerning which restrictions would actually maximize utility.

Two objections to this argument for the state having a greater capacity to make decisions than the individual are: (1) how could the state know what I enjoy or what I prefer—extensive information that can be considerably different for each individual—and would it negatively affect my well-being if these are not taken into consideration, and (2) what is there to stop the state from arbitrarily making decisions purportedly in my best interest and abusing its power? I will discuss the first objection in my section on preference utilitarianism, where I will argue that preferences are secondary to action-effects, and that they are adaptive. As for the objection that the state could abuse its power, I will respond to this throughout my essay as a build-up argument. I will start by identifying what I see as a faulty premise in the objection against the state having the authority and the duty to protect its populace from making “bad decisions”: it attempts to portray the state as an entity that does not have best interests of its citizens at heart.

The main premise of this argument is: what gives the government more of a capacity to make the best decisions for the populace? In our current government, politicians are more likely to be from certain demographics—white, Christian, middle and upper class families—who might not necessarily have the interest of the entire populace at heart; they could be concerned more with decisions that are more likely to get them reelected, and might make efforts to cater more towards the majority population or their chosen special interest groups. In addition, it seems that

state authority is the direct result of a government being composed of people from a particular society, and from this authority, the duty arises to facilitate the best outcome for the people. But would this hold in all cases, as in, for example, a dictatorship where the authority of the state is not directly derived from its citizens? Also, liberty and freedoms are supposed to be a check on governmental authority to prevent unnecessary intrusion, corruption, and abuse of power. To say that the government will always have the best interest of its people at heart when making decisions, and that the people should thus relinquish their claims to autonomy for the betterment of the whole society, would place an extraordinary amount of trust and power in the hands of the state.

I will respond to the first part of that objection by stating that I am fully prepared to accept that I do not know everything about how to run my life, and I am sure that most people would agree; there are actions that I could take, if I were left to my own devices, that might not maximize my utility nor serve the greater good as a whole. Furthermore, I will not always act to appease the utility of my neighbors and peers because I am self-interested and would like my personal utility appeased first. I think, barring extreme cases of altruistic Samaritans, we can make the assumption that most everyone is similarly self-interested. To say that an individual has the means to make the best possible decision would accept that these actions would more often than not single-mindedly serve the purpose of one. This is akin to a child who assumes they know what they want and what they want to do. In an ideal government, however, people in the position of power have the capacity and knowledge to make decisions that are better for the populace as a whole. It would be their duty, as a necessary job description, to facilitate that outcome by virtue of the means in which they come to and retain their power. The government, as the name paternalism would suggest, acts like a parent agent who would tell that child that

they, in fact, do not know everything simply because they do not have the means or ability to know everything. Actions would then be guided in the best interest of that child, or that individual.

In response to the second and third parts of that objection, I can only say that this argument pertains to an ideal sort of government that would legitimately derive its authority and duty from the people, would have the means to facilitate the best outcomes for its people, and would respect liberty when restrictions do not maximize utility. This is not to say that our current mode of government should not implement such restrictions just because we do not have the unshakeable guarantees that they will not abuse this power. I think, to an extent, our government should still limit autonomy; however, the instances and justifications where governmental action does not maximize utility are more numerous when the potentiality of corruption, abuse of power, and so forth exist. Furthermore, there is a *de facto* limit to my argument—restrictions which do not maximize utility are unjustifiable—and from there, it is relatively easy to identify when an abuse of power has occurred. Therefore, while, in an ideal government, a more expansive state paternalism would be justifiable, in our current government certain flaws and traits will factor into whether a restrictive action maximizes utility, yet that does not eliminate the need for such restrictions.

An Acceptable Paternalistic Action

There are several issues surrounding state diet regulations: obesity is both a medical problem and a societal burden. It is a problem that has become ever more prominent in recent years because obese children are “more likely to suffer joint problems, asthma, and other respiratory illnesses. Also, obese women are “likely to have problem pregnancies” (Chasin 125-

26). Due to obesity and obesity-related diseases, our life expectancy has been growing shorter rather than longer, and some estimates find that 300,000 to 400,000 people “will die each year from obesity-related causes” (Munson 117). In healthcare costs, type-2 diabetes amounts to an estimated 132 billion dollars a year in “medical bills, disability payments, and lost productivity,” compared to 172 billion dollars in cancer-related costs (Munson 118). But how far should state paternalism go in trying to maximize group utility?

Take, for example, the freedom to eat as one chooses: this is arguably an undeniable negative right—in that the duty bearer must simply do nothing to infringe the right-holder’s liberty. However, with the current climate of unhealthy foods, overabundance, and the “super-size me” mentality, this freedom becomes a burden to individuals, hospitals, and the state. Childhood obesity and type-2 diabetes rates have risen since the 1970s, rapidly increasing in particular among “Mexican Americans, American Indians, and African American children” (Chasin 125). Fast-food companies advertise to younger audiences, especially children, to utilize the “pester power” of nagging children, and to promote brand loyalty; furthermore, fast food is cheap and convenient, but made with unhealthy ingredients that are linked to many health problems (Chasin 125-26). This is an example of structural violence towards impoverished communities that cannot afford healthier options and must, by necessity, choose inexpensive fast food, which in turn can cause health problems and lead to healthcare expenses, which keeps them impoverished. In a logical argument, lack of health is a problem for society, as seen by the evidence previously presented; it produces a lot of disutility. If the state can limit disutility in the best interest of society, then it should; this justification comes from act-utilitarianism and paternalism. Certain food regulations, although they violate the negative right of personal

autonomy, would reduce disutility and increase collective well-being. Therefore the state should enforce certain food regulations and is justified in doing so.

The government has already stepped in to regulate food choices in primary and secondary education schools, and has required nutritional information for almost all commercially-sold food products. The utility of these acts—in protecting the health of the people—promotes the welfare of the individuals in the targeted group: the well-being/happiness of people who eat food outweighs the burden, or the suffering, of the commercial entities which sell the food. It also outweighs the inconvenience or disutility of restricting access to an individual's preferred foods. Although these are drastic intrusions into our freedom to choose food, and an additional regulation for a business' freedom to sell products, these acts of state paternalism are justifiable under act-utilitarianism because health is a major factor in calculating the well-being of an individual. Health goes beyond individual well-being to influence other aspects of life that, in turn, contribute to maximum overall utility, and the potentially-negative effects outweigh the rights of the food sellers.

More drastic measures could also be proposed, such as requiring fitness programs or relegating obesity-causing foods to the status of liquor or cigarettes, and would also be justified as long as their maximum potential utility outweighs any potential suffering. Thus, with the case of a state-regulated diet, freedom is necessarily mitigated to promote public welfare. Under the same logic, in cases where the empirical evidence supports the claim of maximizing utility, state paternalism is justified in operating to promote maximized well-being for the benefit of the greatest good by violating an individual or a business' freedom to choose or sell.

An unjustifiable instance of state paternalism in restricting a person's autonomy when choosing what to eat would be a state-imposed diet. While the benefits of such a rule would save many individuals the trouble of choosing between the countless peanut-butters in the supermarket, such a restriction would require enforcement to be effective. Testing individuals for signs of deviation from such a program would constitute an unnecessary violation of autonomy. Smoking laws are effective because the focus is primarily on the effect on others. When the action is public, deviations are easily identifiable. Private occurrences are up to private individuals to mitigate, because it would come down to your smoke affecting my health—as opposed to my eating habits affecting my own health. But with diet restrictions, the crux of the detriment is on the individual level, and for such a program to truly be effective, the state would have to know if it was followed on this individual level. In a public venue, like a restaurant, a state-imposed diet could be easily implemented: it would come down to simply controlling the menu.

But a lot of, if not most, eating occurs in a more private setting, and to test for deviation would be an unacceptably invasive, costly, and tiresome intrusion of privacy. Furthermore, considering our current government and mode of economy, a state imposed diet plan could allow for the monopolies of certain products. This would destroy many businesses, and could translate to higher consumer prices for healthy products such as water. These are just some examples of the disutility of a state-imposed diet program, where the utility of the effects are outweighed by the excessive restrictions and negative potential outcomes. The benefit of such a program—elimination of obesity-related health issues and their consequences—could be achieved, though perhaps to a lesser extent of effectiveness, by other means that would increase utility to an even greater extent—that is, the disutility of the restriction would be small enough to be outweighed

by the positive effects to individual well-being—and therefore would be options that should be implemented over a state-imposed diet.

A Controversial Paternalistic Action

In America, the Second Amendment guarantees the right to bear arms, and the courts have interpreted arms to mean guns. Thus, in our society we have the right to own and carry guns. However, guns are used in violent ways, whether to rob a bank or protect one's home; the actual use of a gun is rarely ever an act which maximizes utility, and therefore is rarely ever morally justifiable under act-utilitarianism. I offer this example:

In 1995 Sam Walker's wife called him, saying their security company had notified her that their burglar alarm had gone off. He went to their Texas home, found the door unlocked, and got his recently purchased .38-caliber revolver. Checking the house, he went into his daughter's room, saw someone he didn't instantly recognize, and fired, killing sixteen-year-old Sheree who had skipped school (Chasin 37).

A study of firearms deaths for advanced capitalist countries found that the United States in the year 2000 had 28,663 total deaths due to firearms, which is a rate of ten per 100,000 people (Chasin 39). This accounted for sixty-eight percent of total firearms deaths of the forty-five countries where data was collected (Chasin 38). Furthermore, in 2000 "some type of gun was used in 16,746 suicides" in the United States (Chasin 38).

However, it is argued that the act of owning or carrying a gun promotes safety for an individual, which is an intrinsic good that contributes to utility. But the danger felt by those around a person who owns, carries, or possibly uses a gun would outweigh that self-interested safety of the gun-owner. In its efforts to limit the use of guns, the state has stepped in with gun licensing and registration, gun trafficking laws, and gun bans in national parks and places like

the National Mall in DC; still, guns are allowed in other potentially high-risk areas like bars, or even just out in the public (Chasin). The state can clearly violate a constitutional right here in the name of public safety because the act of banning guns or the regulation of its sale would inconvenience or reduce the safety of the buyer/seller and the commercial aspect of the firearms market, but would increase public safety by eliminating a violent weapon.

State paternalism extends its reach to justify its authority in restricting potential actions by deterring gun usage and preventing gun-related violent crimes. Therefore, banning personal guns is justifiable because it maximizes utility. Although the Supreme Court has ruled that such restrictions on gun ownership are unconstitutional, I argue that they are not—or at least that the constitutional violation is justifiable because it promotes the well-being of the people that uphold the same Constitution. This is not to say that the Constitution has no authority from which we should derive our laws, but rather that the argument behind attributing unconstitutionality to this particular restriction might be flawed and it only requires re-adjudication of the issue. Under this same logic, other instances of rights-violation by the state in the name of state paternalism—even if deemed unconstitutional, or the equivalent thereof—to promote safety would be justifiable so long as there is necessary empirical evidence that supports the claim to maximize utility.

An unjustifiable instance of restricting firearms would be a ban on all types of guns and gun usage in every situation. The negative effects of paintball, air, or BB guns are minimal, and ownership of such firearms presents a recreational benefit to individuals and a viable alternative to more dangerous types of guns. Restricting these firearms would not maximize utility and would not be a justifiable course of action. Furthermore, police officers and other security forces use guns, and to restrict their ownership of such weapons does not take into consideration the

realistic fact that even if guns are banned, not all people will follow this rule; for the safety of the populace, those with the duty and training to protect the people need guns. On the issue of hunting and whether it would be justifiable under my argument, there are instances where the state takes into account the utility of animals—e.g. anti-torture animal laws, limitations on animal testing, etc.—and instances where the animal itself is given an intrinsic value—e.g. endangered species laws. Furthermore, there are already restrictions on hunting that limit the number of animals one can hunt, the type of animal, the age of the animal, or the season in which you are hunting.

One of the things that made utilitarianism such a progressive theory was the fact that it made no distinction between the interests of humans and animals; one of the earliest qualifications for consideration was the ability to feel pain, which is recognizable in both humans and animals. Therefore, under my argument, greater restrictions on hunting can be justifiable because the utility of the animal is taken into consideration and would outweigh the hunter's utility in many cases. However, the outright banning of hunting as a subset of limiting firearm usage would be a needlessly excessive restriction, at least in the United States, considering the facts that (1) hunting is a means in which some people support their own livelihoods and/or businesses, (2) regulated hunting takes into account the utility of both animals and humans could be justifiable under act-utilitarianism, and (3) there might be other ways to hunt, such as with bows or crossbows, but these might not be as humane in practice as guns, which would actually, in this case, promote a greater utility for hunting. In an ideal situation, completely banning gun ownership for all purposes would be an action that maximizes utility, but considering the relevant social, cultural, and economic factors at play in the United States currently, it would be an unjustifiable restriction.

An Unjustifiable Paternalistic Action

There are de facto limitations to this argument; however, these limitations would be the result of act-utilitarianism finding a particular state action as not maximizing utility when restricting freedom or rights, and not just an arbitrary cap on state power. An example of this would be restricting freedom of speech. I am not arguing that freedom of speech in itself has value as a right, but the implications of its restrictions would not create the best possible outcome for the population. For instance, if the state were to limit what I can say about my government, this would be a means of controlling dissent and limiting opposition, in order that, potentially, the state could better operate. And while this might promote utility for the state, it would limit my control over an entity that should be, in part, constituted by me. As I have discussed before, this argument operates under the assumption the state has its authority and duty derived from the people, and that, in part, is why it would be justifiable for the state to then restrict the people to look out for them.

But if that connection were severed by limiting my ability to contribute to the composition of my government, in the form of offering a critique of the way it operates, the disutility of that disconnect would outweigh any benefit to the state. Furthermore, the state is a minority part of the population, such that the benefits of restricting my ability to criticize the state would positively affect only a small portion of people, as opposed to the rest of us who would have no venue from which to effectively practice an essential form of civic engagement. This is just one example of the many in which restricting freedom of speech would be excessive and ultimately unproductive. The positive utility of free speech has incredibly broad and overarching effects on many aspects of an individual's well-being, so any restriction would too

be broadly restrictive of personal utility. Even on the ideal level, we can see how restricting freedom of speech is an unacceptable act because it does not maximize utility; one example is that it inhibits moral growth by suppressing a tool that is meant to offer reflective and constructive criticism on a society. Thus on the practical level, if we look specifically at the government of the United States, it is excessive and unjustifiable to restrict individuals' freedom to speak their mind.

The implications of the argument I put forth suggests that the state has broad power in regulating individuals' lives; this only requires us to restructure our notion of the extent to which autonomy, rights, and freedoms allow us to do whatever we please. However, there are cases where my argument could be misunderstood or misused; one such case is the USA Patriot Act. Many fundamental rights are stripped from citizens in the name of protection; these include habeas corpus, a warrant to collect evidence against an individual, fair and public trials, etc., that all purport to increase the collective utility of society. After all, we do not generally wish for another terrorist attack to happen, and if these are the actions the state must take to ensure our safety and utility, then it would seem fair. For the sake of this argument, I won't go into the specific political details of this federal action, but at face value, this type of restriction seems to fit with my argument.

The problem here is not that such restrictions are ineffective; it may very well be that this is an effective means of combating violence against the citizens of a state because promoting the well-being of the people is a duty of the state, and safety factors hugely into the measure of an individual's well-being. But this action is only justifiable if we measure success of a restriction by the effectiveness of its results. My argument, however, looks at overall utility which takes the

effectiveness of outcome and compares it to the disutility produced in implementation; an action that increases utility to a large degree, while producing disutility to an equally large degree, would have a small net-utility gain. Furthermore, we must look at other actions and their net-utility gain to ascertain which of these potential restrictions by the state is the action that maximizes utility—produces the greatest net-utility gain—for the overall population. As I have emphasized in each restrictive case throughout my argument, there are actions that can have highly effective results, sometimes even the best result out of every potential action, but that does not justify it. Defending the USA Patriot Act with the argument I put forth is a prime example of misunderstanding and misusing my argument in this way.

Classical Utilitarianism and Freedom

There are other utilitarian theories which value individual freedom intrinsically as a part of the utilitarian calculus; they would argue that freedom and free will are necessary components of utilitarianism, and to deny them would not, in fact, maximize utility (Mill). This would be the most extensive objection to state paternalism in violating an individual's freedoms, rights, or autonomy.

John Stuart Mill, a founding philosopher of utilitarianism, values freedom and liberty as agents with which individuals can seek out their self-interested utility. This idea is a part of classical utilitarianism: it enables progress in thought and action, which in turn adds to overall utility. Furthermore, Mill argues that liberties should not be restricted unless that individual's autonomy will directly cause harm to another. An implication of Mill's argument is that freedom and liberty have an intrinsic value independent of the consequences of adhering to those freedoms or liberties (Brink). David Brink argues that this is an apparent contradiction with

Mill's position on utilitarianism, and I agree; it has been inferred that Mill values liberties as deontological intrinsic goods that have value "prior to and independent of the good" (Brink). This idea is contradictory to classical utilitarianism, which argues against such arbitrary indicators of ethics and tries to frame justifiability in terms of its consequence. I agree with the argument that liberties and utilitarianism cannot coexist together as equal entities because utilitarianism does not recognize the legitimacy of an intrinsic moral value; it focuses on utility and consequences.

In regards to freedom, the outcome of self-interest is not bound to the overall maximized utility; it is instead based on individual wants, which, being self-interested, conflict with the utility of society as a whole. As freedom, an agent of individuals seeking out their self-interested utility, is not the option whose outcome supports the maximized utility, its adherence is unjustified according to act-utilitarianism. Thus I would argue that Mill's version of classical utilitarianism does not fit with itself in that it delegitimizes abstract intrinsic values as indicators of ethics while embracing an abstract intrinsic value of liberty, and we should instead practice act-utilitarianism.

Mill posits that utilitarianism is not a concrete idea, but is instead a constantly evolving project in which freedom plays a pivotal role (Mill). This is known as the freedom-utility project and in Suma Portillo's essay, "Unequal Benefactors and Beneficiaries: The Utilitarian Inadequacy of Mill's Arguments for Freedom," the author refutes the validity of this argument—that the freedom-utility project is a feature of utilitarianism—by outlining how its outcome does not serve total utility, but instead creates an elitist-centered utility (Portillo). I will further her conclusion by arguing that freedom itself is not a necessary or beneficial feature of utilitarianism

because its outcome does not maximize utility. Classical utilitarians would object to my argument because freedom is a component of utilitarianism. Their justification is that, according to Mill, free choice and self-interest add to the common overall utility—by way of increasing happiness or being intrinsically good—and the violation of freedom would, conversely, diminish utility.

For Mill, freedom is “pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it” (Schauer 312). Mill argues that “neither one person, nor any number of persons, is warranted in saying to another human creature of ripe years, that he shall not do with his life for his own benefit what he chooses to do with it” (Schauer 328). An individual is “the person most interested in his own well-being: the interest in which any other person, except in the cases of strong personal attachment, can have in it, is trifling, compared with that which he himself has” (Schauer 328-29). A key component of freedom is self-interest, and while self-interest would increase individual utility, it can actually lower overall utility. In the case of smokers, who possess a self-interested liberty to smoke where they please, their right to individual freedom would increase their personal utility, but those around them, who could suffer the negative effects of secondhand smoke, would be adversely affected. The positive utility of giving an individual the liberty to smoke anywhere is outweighed by the magnitude of the ill effects of secondhand smoke on adjacent bystanders or passersby. This includes potential health effects and the relevant fact that they did not choose to smoke, but were instead affected through no action or choice of their own. Furthermore, the negative effects could presumably fall onto a greater population, leading to the conclusion that the suffering of the victims would very much outweigh the positive utility of the smoker. In this case, self-interest conflicts with overall utility, and freedom, as a consequence of self-interest, would not

maximize utility; instances of freedom might maximize utility, but freedom itself does not in all cases, and therefore it should not be a necessary consideration for utilitarian calculations.

However, Mill argues that “the interest of which society has in him individually (except as to his conduct to others) is fractional, and altogether indirect” (Schauer 329). Individuals have the knowledge of how to govern their lives, which surpasses the knowledge that society might have in making that same decision. Mill makes this point by stating that:

The interference of society to overrule his judgment and purposes in what only regards himself must be grounded on general presumptions; which may be altogether wrong, and even if right, are as likely as not to be misapplied to individual cases, by persons no better acquainted with the circumstances of such cases than those are who look at them merely from without (Schauer 329).

This assertion leads into my next section about preference utilitarianism, but I think that substantively and qualitatively the state now has a better means of grounding their “general presumptions” than in Mill’s time, considering advancements in communication and general technology.

Preference Utilitarianism and Adaptive Preferences

There are other utilitarian theories that exist which could conflict with state paternalism and act-utilitarianism. A preference-utilitarian—who holds that “we should act so as to maximize the satisfaction of people’s preferences”—would argue that by violating individual freedom, the preferences of the affected individuals are not being considered (Rachels, 103). If an individual prefers fast food, then regardless of its detrimental effects, to maximize utility that preference should and must be allowed. Also, if people prefer having guns in their home for protection, it would not maximize utility to disregard that preference by restricting gun ownership. They

would also argue that we want our preferences to be met, and if satisfying certain preferences prevents more preference-satisfaction, then those preferences should accordingly not be met.

There are many different classifications for what counts as utility, how to maximize it, and how to make ethical decisions based on those standards. As was discussed, classical utilitarianism values freedom as an integral part of calculating maximized utility. Preference utilitarianism, at face value, would object to my argument on the grounds that it does not consider a person's preferences. However, the conditions in which a person comes to prefer fast food are many: they might be pressed for time, impoverished, or they might just like the taste. Preferences by themselves should not be the end result of a utilitarian discussion even if they are the indicators of utility: an obese person might prefer unhealthy foods, but this does not remove health factors from consideration. In fact, as the name "adaptive preferences" suggests, preferences can change; the conditions from which a person comes to prefer fast food should not legitimize fast food. Instead, if paternalistic action is taken to restrict the sale of unhealthy foods, individuals will come to prefer healthier foods because they are more readily available. If paternalistic actions restrict the ownership of guns, the conditions surrounding the preference of firearms will shift, and homeowners could then rely more on nonlethal home security systems, like tasers. Preferences should not be the only means by which we measure utility simply because preferences are whimsical; however, if instead preferences are considered as one factor among many that play a role in determining utility, then shifting the conditions by which an individual comes to prefer a better alternative will further justify state paternalistic restrictions of autonomy.

An example of adaptive preferences is smoking in restaurants, classrooms, or other indoor public areas. Previously these practices were completely part of the norm, and when restrictions were implemented there were disgruntled feelings and maybe even some pushback. However, now it is almost inconceivable to even attempt to light a cigarette in a restaurant or classroom; even thoughts of where one should go to smoke do not include these public areas because the preference to smoke in those areas have changed over time. Similarly, the preference to eat fast food or own a gun can be altered if we recognize that these are actions that do not promote our best interests, and then eliminate them as viable options.

False Consciousness and Domination

Isn't it quite contemptuous for anyone, let alone the state, to tell us what our best interests are? And then to justify their actions by arguing that our un-best interests will change to fit their specifications? It would be deeply condescending to suggest that I suffer from false consciousness if I do not act in my self-interest as defined by the state, and this could be a way for the state to impose its agenda on individuals. Even if it is justifiable under act-utilitarianism, this presupposes that those who do not fit within the "maximization of utility" model do not actually know how to live their lives properly. Even if it is morally justifiable, my argument operates under concepts of how one should live that are not necessarily universal (democracy, capitalism, etc.), but this argument would then say that those who do not maximize utility under these models are wrong in the way they choose to live their lives, and therefore must be coerced by the state to change and fit within these concepts; this is an exertion of power in the form of domination.

I agree that this is possibly true. But just because something might be offensive to the way we currently perceive things does not make it morally wrong. As Steven Lukes argues in *Power: A Radical View*, if “domination” is done paternalistically and for the benefit of the individuals, then it would be an instance where the exertion of power should not be labeled as “domination” (with its negative connotations) because that exertion of power is fruitful and constructive (Lukes, 85). According to Lukes, we are always conforming to some form of domination as we simultaneously resist another; we are simultaneously dominating those who are around us or in our circle of influence. Every time we interact with another person’s sense of self, we are dominating/influencing them, or being dominated/influenced by them; we force others to conform or resist, and we in turn are forced to do the same. This might seem like a negative model for understanding human interaction, but as Lukes argues, human beings are social creatures. We learn what is socially fruitful, helpful, or acceptable from the reactions of other humans. As we develop, we internalize that gaze—where an actual reaction is not necessary because we know the expectation of that reaction—and it in turn shapes our actions, our preferences, and our mores. Thus, some forms of domination, oppression, or repression are constructive and a vital part of human interaction and development. There are, of course, some forms of domination that are destructive, but restrictions by the state would fall into this category only if they do not maximize utility. If they are successfully justified under act-utilitarianism, then they would just be necessary and beneficial components of human shaping processes that are inherent in societal constructs.

Abuse of Power by State Paternalism

The most impactful objection to this argument is the one most feared: the overuse of state paternalism would create a police state where the people are subjugated by the totality of governmental rules. Any individual protection would be swept aside, allowing for the broad use of power and increasing the risk of corruption. In many societies, rights are a means of protecting autonomy, freedom, and liberty from unwanted governmental intrusion. But if such intrusions can be justified as paternalistic actions meant to serve the best interest of the public, and if the government is the one who makes that determination, then it is a circular reasoning that can allow for broader restrictions with little resistance from the aforementioned institutional defenses. Furthermore, as was previously noted, white, Christian, middle and upper-class people are more likely to hold power in American government, and these people are thus more likely to do what gets them elected—i.e. following the will of the majority as well as special interest groups. This factors into an abuse of paternalistic action, like, for example, placing landfills near poorer communities instead of near suburbs where a politician's main electorate lives. This would maximize the utility of the population that matters in elections, while being detrimental to the underrepresented population.

I will tackle this objection in two ways. One is to say that in an ideal governmental situation, an abuse of power is not justifiable under act-utilitarianism because any benefit would be outweighed by the restrictions of personal freedom. Paternalistic actions that are unjustified should never be implemented, because they simply do not maximize utility. If the state subjugates its people with laws and actions that are paternalistic but unjustifiable, then the state has violated both its legitimacy and its duty to serve the best interests of its citizenry, and the people would then have the justification and responsibility to change that government.

Conceptualizing what the state can do on an ideal level helps us look at the extent to which an ethical action by the state is justifiable. I present a version of my justifications for paternalistic restrictions outside the confines of realistic or humanistic factors (that actually restrict what the state should do in a situation) because then, in the broadest sense, we can clearly articulate the limit of unjustifiable actions: purely a failure to maximize utility. We see ideal situations used as fruitful explanations in other areas, such as economics; I think the most analogous example is Adam Smith's model of the free market which outlines the implications of its theory independent of human self-interest. As Peter Singer articulates:

In theory—abstract theory, that is, free from any assumptions about human nature—a state monopoly should be able to provide the cheapest and most efficient utility services, transport services, or, for that matter, bread supply; indeed such monopoly would have huge advantages of scale and would not have to make profits for its owners (Singer, 278).

Here, the ideal is used as a model for the implications of the free market theory, so we can see the most radical result of a theoretical market. But a monopoly will never be the best course of action because humans are driven by self-interest, and the chances of this outcome ever occurring are slim to none. But it is still useful to know the theoretical outcome. The same holds for paternalistic restrictions: ideally, the limit of state actions depends on whether that action maximizes utility, and an abuse of power would never take place because it would violate this rule.

But, I recognize that we do not live in an ideal world, and the human factors of self-interest and socio-historical contexts are extremely relevant. Most of my argument uses the example of America and its democratic style and populace in justifying certain restrictions. If we are to justify state paternalistic actions by arguing “since it has the means, it should have the

power,” I would place a somewhat unwarranted amount of control in the hands of the state. With this power comes an understanding that the state will follow its duty to do what is best for its populace. But we must be aware of the state’s actions and recognize abuse if it happens. Giving the state the power to restrict individual autonomy does not justify abuses of that power, but I do understand that there is a fear of it occurring.

However, as Slavoj Žižek argues in *In Defense of Lost Causes*, the failure of a government in overreach, abuse of power, or committing deplorable acts in the name of the state does not delegitimize that form of government (Žižek). Similarly, the failures of previous states in restricting individual freedoms, liberties, or autonomy—such as that they do not maximize utility and would be unjustifiable under act-utilitarianism—does not mean such restrictions are in themselves bad, or that we should not pursue any form of restriction because it potentially could have negative consequences. I think that the fear of state abuse of power that one could draw from my argument stems in large part from previous instances of this occurring; but in those instances, there is a learning opportunity to identify which restrictions were not in that case justifiable.

To shy away from such failures to maximize utility, especially since in many of these cases utility of the population was never an issue, is a failure to realize a potential in promoting greater well-being. If I did not realize that biking in the greater Portland area was dangerous when I do not wear a helmet, and then the state then took away my bike as a means of preventing harm and promoting my utility, this might be an unjustifiable act and it would be beneficial to recognize it as such. But to then say that the state should not restrict my freedom to ride as I please solely because we are fearful that they could also potentially take away my bike altogether

as an overreaching action misses the point entirely: this fear is unjustifiable. Yes, there is a possibility that the state could abuse its power of restriction under my argument, but if it does, we could easily recognize what makes it unjustifiable and we would immediately know that it is wrong. As with restricting freedom of speech, we know that this is a possibility and it has occurred in the past; but we have also clearly identified it as an unjustifiable restriction, and that they never last long because we know they are wrong. Fear of the immoral actions that might take place if we were to implement a policy to maximize utility should not prevent us from trying to promote a morally good life for individuals.

Conclusion

The government, under state paternalism, has both the authority and the duty to act in a manner that maximizes utility in all cases; furthermore, an individual has no claims to autonomy, freedoms, or rights if they conflict with these actions of the state. Logically applied, any seemingly drastic individual violation is superseded by the fact that group well-being is promoted to a greater effect; on the other hand, a de facto limitation is not one that limits the scope of state power, but instead directly opposes particular state restrictions on individual freedoms or rights based on an act-utilitarianism analysis of consequences, where the limitation does not maximize utility. Put simply: if an act by the state restricts individual autonomy, rights, or freedoms, but maximizes societal utility, then the state is justified in implementing those restrictions.

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